TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~242~~ 105.

T. K. WILSON, PLAINTIFF IN ERROR,

vs.

J. F. STANDEFER.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED JULY 11, 1900.

(17,828.)

(17,828.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 343

T. K. WILSON, PLAINTIFF IN ERROR,

vs.

J. F. STANDEFER.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from district court of Tom Green county	1	1
Caption	1	1
Plaintiff's original petition	1	1
Defendant's waiver of service	2	2
Defendant's original answer	2	2
Statement of facts	3	2
Judgment of the court	12	9
Appeal bond	13	9
Assignment of error	14	10
Bill of costs	15	12
Clerk's certificate	16	12
Motion to advance	16	13
Order submitting motion to advance	17	13
Order granting motion to advance	17	13
Agreement to submit	18	14
Order submitting cause	18	14
Order certifying questions to supreme court	18	14
Answer of supreme court to questions certified	19	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 22, 1900.

	Original.	Print
Bill of costs of supreme court	27	20
Judgment of court of civil appeals	28	21
Opinion of court of civil appeals	28	21
Motion for rehearing	29	22
Waiver of service of motion for rehearing	31	23
Order overruling motion for rehearing	32	24
Petition for writ of error	32	24
Judgment of supreme court refusing writ	39	29
Bill of costs of supreme court	40	30
Supersedeas bond	41	30
Assignment of errors	43	32
Bill of costs, court of civil appeals	45	34
Clerk's certificate, court of civil appeals	46	34
Petition for writ of error	47	34
Allowance of writ of error	57	40
Order for return to writ of error, &c	60	41
Writ of error	62	41
Citation	65	42
Acceptance of service of citation	66	43

a In Court of Civil Appeals, Third Supreme Judicial District of Texas.

J. F. STANDEFER, Appellant,
vs.
T. K. WILSON, Appellee. } No. 2335.

1 *Caption.*

THE STATE OF TEXAS,
County of Tom Green.

At a term of the district court begun and holden at San Angelo, within and for the county of Tom Green, before the Hon. J. W. Timmins, and ending on the 10th day of June, A. D. 1899, the following case came on for trial, to wit:

THE STATE OF TEXAS,
County of Tom Green.

Plaintiff's Original Petition.

Filed May 6th, 1899.

In the District Court of said Tom Green Co., May Term, A. D. 1899.

J. F. STANDIFER, Plaintiff,
vs.
T. K. WILSON, Defendant.

To the honorable the district court of said county:

Your petitioner, J. F. Standefer, hereinafter styled plaintiff, complaining of T. K. Wilson, hereinafter styled defendant, respectfully represents to the court that plaintiff resides in Tom Green county, Texas, and the defendant resides in Concho county, Texas.

For cause of action plaintiff alleges that heretofore, to wit, on the 13th day of September, A. D. 1897, he was and now is lawfully seized and possessed of the following-described tract of land, to wit, section No. 42, in district No. 11, in the name of S. P. R'y Co., containing 640 acres of land, situated in Tom Green county, Texas, owning and holding the legal title thereto; that on the day and year last aforesaid the defendant entered upon the said premises and ejected plaintiff therefrom and unlawfully withholds from plaintiff the possession thereof, to his damages in the sum of $2,000.00.

Wherefore, premises considered, plaintiff prays that defendant be cited to appear and answer herein as the law directs, and that upon a trial of this cause he have judgment for the title and pos-
2 session of said lands, with his writ of restitution and possession, for his damages and costs of suit, and for general and special relief.

A. R. BURGES,
Attorney for Plaintiff.

Endorsed: "This action is brought as well to try title as for damages." A. R. Burges, attorney for plaintiff.

Defendant's Waiver.

I hereby waive the issuance and service of citation and hereby accept the service of the within petition, and agree to appear and answer at the next term of the said district court.

T. K. WILSON,
By HILL & WRIGHT
Attorney- for Defendant.

Filed May 6th, 1899.

ED. DUGGAN,
Clerk Dist. Court, Tom Green Co., Tex.,
By JAS. B. KEATING, *Deputy.*

Defendant's Original Answer.

Filed May 24, 1899.

In District Court, Tom Green County, May Term, 1899.

J. F. STANDEFER
vs.
T. K. WILSON.

Now comes T. K. Wilson, defendant in above cause, and, excepting to plaintiff's original petition, *and* says the facts therein alleged are insufficient in law to entitle plaintiff to recover; and of this he prays judgment of the court. Further answering, defendant denies all and singular the allegations in plaintiff's petition contained, and says that he is not guilty of the wrongs and injuries and trespasses laid to his charge, as alleged in said petition, in the manner and form as therein charged; and with this he puts himself upon the country.

Wherefore defendant prays that plaintiff take nothing by
3 his suit, and that he go hence without day and recover of plaintiff all costs in this behalf incurred, and for general and special relief.

HILL & WRIGHT,
Att'ys for Def't.

Filed this 24th day of May, 1899.

ED. DUGGAN,
Clerk Dist. Court, Tom Green Co.,
By JOHN O'K. WHITE, *Deputy.*

Statement of Facts.

Filed June 10, 1899.

J. F. STANDEFER
vs.
T. K. WILSON. } Suit Pending in the District Court of Tom Green County, Texas.

It is agreed by and between plaintiff and defendant in the above numbered and entitled cause that the only question involved in

this suit is the validity of the forfeiture declared by the commissioner of the general land office of Texas on August 20, 1897, of the purchase of the land in question, made under the act of the legislature of Texas approved July 8, 1879, and the amendment thereto approved April 6, 1881, under which defendant claims title. If, under the facts hereinafter set forth, said forfeiture was constitutional, legal, and valid, then judgment shall be rendered in favor of plaintiff for the land described in his petition; but if, under said facts, the said forfeiture was in violation of the Constitution, illegal, and invalid, then judgment shall be rendered in favor of defendant, and from any judgment rendered herein either party may appeal.

Agreed Statements of Facts.

1. The land sued for and described in plaintiff's petition, to wit, section No. 42, district No. 11, S. P. R. R. Co., in Tom Green county, Texas, was on May 1, 1882, public free school land, being the alternate section surveyed by said S. P. R. R. Co. for the public school fund of Texas and reserved under the constitution and laws for the use and benefit of the public free schools of Texas, and was a part of the said land the sale of which was authorized under the act of the legislature of Texas approved July 8, 1879, and the
4 amendment thereto approved April 6, 1881.

2. That on the 1st day of May, 1882, said survey of land was recognized and abstracted by the State as situated wholly in Concho county and was so recognized, abstracted, assessed for taxation, and taxes paid thereon until the year 1891, when the boundary line between the counties of Concho and Tom Green was run and established under a joint survey made by the two counties, and said land was ascertained to be in Tom Green, and has since said year been recognized and abstracted by the State as situated in Tom Green county and since said year has been assessed for taxation and the taxes paid thereon in said Tom Green county.

3. That the county surveyor of Concho county, in obedience to and under the act approved July 8, 1879, and the amendment thereto approved April 6, 1881, viewed and appraised said land under oath, as required by said act, and made return of same to the commissioners' court of Concho county, which said court examined and approved same, classifying as suitable only for grazing purposes, no timber or water, and appraised it at $1.00 per acre.

4. That upon the completion of said appraisement the county commissioners' court of Concho county prepared a tabulated report of their action as to said survey, setting forth the following, to wit, "Survey No. 42, district No. 11, 640 acres, S. P. R. R. Co., $1 per acre, suitable only for grazing purposes, no timber or water," one copy of which said report was filed in the office of the county surveyor of Concho county, one copy forwarded to the commissioner of the general land office, and one copy to the treasurer of the State.

5. That upon receipt of said tabulated report by the commissioner of the general land office the same was by him examined

and in all things approved, and the said commissioner of the general land office notified the county surveyor of Concho county of his approval of said tabulated report and appraisement.

6. That thereafter, on May 1, 1882, Thomas Dolan made his application, in writing, to the county surveyor of Concho county to purchase said land; which said application was as follows, to wit:

"To the surveyor of Concho county: In accordance with the
5 provisions of an act to amend the caption and sections 1, 2, 3, 4, 5, 6, 7, and 8 of an act to provide for the sale of alternate sections of land in organized counties, as surveyed by railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881, I hereby apply to purchase the following land: Section No. 42, district No. 11, Concho county, about N. 12 miles from Kickappoo springs, surveyed for S. P. R. R. Co. certificates: Beginning at N. E. corner S. P. R. R. Co. survey 117, thence north 1,900 varas, thence west 1,900 varas, thence south 1,900 varas, thence east 1,900 varas to the place of beginning. Date 1st day of May, 1882. (Signed) Thomas Dolan;" which said application was on same day filed with said county surveyor and recorded by him May 22, 1882, and all fees required by law paid to said surveyor.

7. That immediately thereafter said Thomas Dolan forwarded to the State treasurer his application, with the sum of $32, being $\frac{1}{20}$ of the appraised value of said land at $1 per acre, and said treasurer entered a credit on his books in the name of said Dolan, and thereafter, on June 22nd, 1882, the State treasurer issued a receipt for said first payment as follows: Treasurer's office, Austin, Texas, June 22nd, 1882. Received of Maddox Bros. & A. on account of Thomas Dolan the sum of $32, the same being first payment on section No. 42, district No. 11, S. P. R. R. Co., of State school land in Concho county under an act to provide for the sale of the alternate sections of land set apart for the benefit of the common-school fund. Approved April 6, 1881. (Signed) F. R. Lubbock, treasurer. And said State treasurer forwarded said receipt, together with said application, to the commissioner of the general land office, who filed said application in his office on June 22nd, 1882, and issued his certificate in lieu thereof, setting forth the amount paid to the treasurer, and the quantity, description, and valuation of the land
6 applied for; which said certificate was by said Thomas Dolan presented to the county surveyor of Concho county, who thereupon surveyed the land embraced in said original application, recorded the field-notes thereof in his office, and forwarded same to the commissioner of the general land office and entered said land on his books July 2nd, 1882, as sold to said Thomas Dolan, and he paid the said surveyor all fees required by law.

8. That when said surveyor received said application said Thomas Dolan executed and delivered his obligation to the State for the

balance of the purchase-money of said survey of land, said obligation being as follows, to wit:

"$608.00. Note for purchase-money, common-school lands.—For value received, I, the subscriber hereto, do promise to pay to the governor of the State of Texas and his successors in office the sum of six hundred and eight dollars, with interest thereon at the rate of 8 % per annum, as hereinafter specified, the same being the purchase-money for the following-described tracts of land this day purchased by me from the State of Texas in accordance with the terms of an act of the legislature of said State, viz., 'An act to amend the caption and sections 1, 2, 3, 4, 5, 6, 7, and 8 of an act to provide for the sale of alternate sections of land in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund; to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8th, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6th, 1881,' to wit, survey 42, district 11, surveyed for the S. P. R. R. Co., Concho county. I am to pay or cause to be paid into the treasury of the State of Texas, on the first day of January of each year, one-twentieth of the above amount, together with the annual interest of eight per cent. upon the unpaid principal until this entire obligation is liquidated, and it is expressly understood that I am to comply with all the conditions and requirements and am subject to all the penalties contained and prescribed in the above recited
7 act. Witness my hand this the 1st day of May, 1882. (Signed) Thomas Dolan;" which said obligation was forwarded to the commissioner of the general land office and by him registered in a book kept for that purpose, setting forth the name of the purchaser, the amount and date of the obligation, the tract of land for which it was given, and the county in which situated, and endorsed said obligation as follows: "Registered June 22nd, 1882. W. C. Walsh, commissioner of the general land office," and delivered said obligation to the treasurer of the State, who filed the same in his office.

9. That said Thomas Dolan and his vendees paid on account of interest on said obligation as the same accrued the sum of $272.65, which was received and applied as interest thereon, but the other payments of principal, except the first payment of one-twentieth of the appraised value of said land, to wit, $32, which was paid at the time of his said application to purchase, as aforesaid, *was* deferred, as authorized and permitted by said act.

10. That thereafter said Thomas Dolan sold said land and conveyed it by deed in proper form to H. Buckley, duly acknowledged and recorded and filed in the land office, and thereafter by regular and constructive chain of transfers said title vested in the Ostrander & Loomis Land & Live Stock Company on April 4, 1888, all of which said conveyances being properly acknowledged and duly recorded and filed as required by law, each of said vendees in succession assuming to pay to the State the balance of the purchase money and interest, as provided in the obligation of said Dolan.

11. That said land, among others, was mortgaged by said Ostrander & Loomis Land & Live Stock Company to the Knickerbocker Trust Company to secure payment of $600,000.00 due holders of its coupon bonds; that in 1892 said Ostrander & Loomis Land & Live Stock Company became insolvent and unable to meet any of its obligations, and in a suit in the district court of Tom Green county brought to foreclose said mortgage judgment was entered on the 17th day of May, 1898, foreclosing the same and ordering the sale of the land so mortgaged, including said survey 42 described in plaintiff's
8 said petition; that an order of sale issued in due form and time on said judgment, and said survey of land, with others, was sold thereunder by the sheriff of Tom Green county, after due and legal notice, on the first Tuesday in July, 1898, being the fifth day of said month, when the land described in plaintiff's petition was bid in by T. K. Wilson, defendant herein, with some other lands, for the sum of $3,250, the amount of his bid paid, and the said sheriff executed to him a deed in due and legal form, properly acknowledged, conveying to him the title of the said Ostrander & Loomis Land & Live Stock Company, and was on the same day filed and duly recorded in Tom Green county.

12. That on the 20th day of August, 1897, the commissioner of the general land office of Texas, acting under and by virtue of the authority conferred upon him by the act of the legislature of Texas entitled "An act to authorize the commissioner of the general land office to forfeit all lands heretofore sold by the State under any of the various acts of the legislature for failure to pay any portion of the interest thereon, approved March 25, 1897," endorsed on the application of said Thomas Dolan given as aforesaid "Land forfeited" and caused an entry to that effect to be made on the account kept of said Thomas Dolan purchase, as aforesaid, and declared said land forfeited to the State without the necessity of re-entry or judicial ascertainment, and had said land duly and regularly reclassified under chapter 12 A, title 87, of Revised Civil Statutes of Texas of 1895 and the amendment thereto, chapter 129, General Laws of Texas of 1897.

13. That the commissioner of the general land office did not at any time prior to the forfeit entered and declared on the 20th day of August, 1897, notify the county or district attorney of the county in which said land was situated of the failure of said Thomas Dolan or his vendees to pay any interest due on the said obligation of Thomas Dolan hereinbefore mentioned, and neither the county nor district attorney of the county in which said land is situated caused any writ to be served upon said Thomas Dolan or his vendees
9 or the mortgagee or beneficiaries thereunder, all of whom resided at said date in Concho and Tom Green counties, requiring him, them, or any or either of them to show cause why he or they should not be ejected from said land, and no judgment was rendered in any court against said Thomas Dolan or any or either of his vendees or the mortgagee or beneficiary under the mortgage aforesaid awarding a writ of possession against him or them in favor of the State, and no copy of any such judgment was forwarded to

the State treasurer and commissioner of the general land office, as required by section 12 of the said act approved July 8, 1879, and no proceedings whatever were had as required and provided by said section 12 of the act aforesaid, but said forfeiture was entered and declared on August 20th, 1897, without any judicial proceedings whatever in any court of Texas, and no judicial proceedings of any kind or character *has* ever been had by the State to forfeit or rescind the sale made to Thomas Dolan, as hereinbefore set out, or to recover on or enforce his obligation given, as aforesaid, for the purchase-money of said land, but said forfeiture was made under said act of March 25, 1897, and was without re-entry or judicial ascertainment and without any actual or personal notice to said Dolan or any of his vendees or to the mortgagees or beneficiaries aforesaid.

14. The commissioner of the general land office of Texas, after the forfeiture entered and declared, as aforesaid, on August 20th, 1897, classified said land described in plaintiff's petition as dry grazing land, and appraised and valued the same at $1 per acre, and placed the same upon the market for sale, and notified in writing the county clerk of Tom Green county on September 11, 1897, of the valuation placed by him upon the said land, and that said land was offered for sale, which said notification was duly recorded on September 11, 1897, by the said clerk in a book for that purpose in his office; and it is agreed that in the classification, valuation, and the placing of said land on the market September 11, 1897, everything was done as required and in strict compliance with chapter 12 A, title 87, Revised Civil Statutes of Texas of 1895 and the amendment thereto, chapter 129, General Laws of Texas of 1897.

15. That thereafter, on September 13, 1897, plaintiff J. F. Standefer, residing upon with his family and being an actual settler on said land, made his application, in writing, as required by law, and on the form adopted and prescribed by the commissioner of the general land office, to purchase said survey 42, district 11, S. P. R. R. Co., 640 acres, in Tom Green county, as an actual settler thereon, at the valuation and classification placed thereon by said commissioner, to wit, $1 per acre, as dry grazing land, and accompanied his said application with his affidavit, stating that he desired to purchase said land for a home, that he had in good faith settled thereon, and that he was not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation was interested in the purchase thereof, which said application was forwarded by said J. F. Standefer to the commissioner of the general land office, together with his obligation to the State, duly executed, binding him to pay to the State on the first day of November of each year thereafter until the whole purchase-money was paid one-fortieth of the aggregate price of said land, with interest, at the rate of three per cent. per annum, on the whole unpaid purchase-money, payable on the first day of November of each year, and upon the same day that he forwarded his application and obligation to the commissioner of

the general land office he also transmitted to the State treasurer $16, being one-fortieth of the aggregate purchase-money for said land at $1 per acre; and thereafter, on October 25, 1897, the commissioner of the general land office awarded said land to him under his said application to purchase as aforesaid and notified him on that date of said award, and the said Standefer has since said purchase paid all interest due upon his said obligation to the State and has continuously resided upon said land as a home and is now residing thereon, and he has in all things strictly complied with the said laws of 1895 and 1897 and the regulatio is adopted by said commissioner of the general land office.

11 16. That on April 25, 1899, defendant T. K. Wilson, through his attorneys, tendered to the State treasurer all interest and principal due on account of said Thomas Dolan purchase, as aforesaid, as is fully shown by the following certificate of said State treasurer, to wit: "I, John W. Robbins, treasurer of the State of Texas, do hereby certify that Messrs. Hill & Wright have tendered to this department all interest and principal due on account for section No. 42, in district No. 11, S. P. R. R. Co., in Tom Green county, sold to Thomas Dolan under act of April 6, 1881, which cannot be accepted for the reason that the account for said land under said act has been forfeited for non-payment of interest to January 1, 1896. In testimony whereof I hereunto set my hand and affix the seal of office, at Austin, Texas, this the 29th day of April, 1899. John W. Robbins, State treasurer, by R. C. Roberdeau, chief clerk and acting treasurer. (Seal.)"

And on same day said Wilson, by his attorneys, made written application to the commissioner of the general land office for a patent on said survey under said Dolan purchase and tendered to said commissioner the patent fee of $6, and the commissioner of the general land office refused to issue said patent for the reason that it appeared from the records of his office that the sale to Thomas Dolan was made under the act of 1879 and amendment thereto of 1881, and that the Dolan purchase of this land was forfeited August 20th, 1897, by the commissioner of the general land office for non-payment of interest and because this land was afterwards, on September 13th, 1897, sold to J. F. Standefer.

17. It is further agreed that at the time of said forfeiture, August 20th, 1897, the State did not pay or offer to pay to Thomas Dolan or any of his vendees the purchase-money on said land or any of the interest paid on said obligation and has not since paid or offered to pay any part of said principal or interest, and the said obligation of Thomas Dolan, executed May 1st, 1882, as aforesaid, has not been returned or offered to be returned to said Dolan or his vendees or said Wilson, but the same is still held and retained by

12 the State treasurer.

A. R. BURGES,
Att'y for Plaintiff.
HILL & WRIGHT,
Att'ys for Defendant.

I hereby certify that the foregoing statement of facts is the true and correct agreed statement of facts made out and signed by counsel for plaintiff and defendant and filed with the clerk in cause No. 1157, entitled J. F. Standefer *vs.* T. K. Wilson, upon which said cause was submitted to me and upon which judgment was rendered in said cause for defendant.

J. W. TIMMINS,
Judge 51st Judicial District of Texas.

Filed this 24th day of May, 1899.

ED. DUGGAN,
Clerk Dist. Court, Tom Green Co.,
By JOHN O'K. WHITE, *Deputy.*

Filed, as a statement of facts, June 10, 1899.

ED. DUGGAN, *Clerk,*
By JAS. B. KEATING, *Deputy.*

Judgment of the Court, May 27, 1899.

In District Court, Tom Green County, Texas.

J. F. STANDEFER
vs.
T. K. WILSON. } 1157.

MAY 27, 1899.

Be it remembered that on this 27th day of May, 1899, this cause came on for trial; plaintiff and defendant appeared in person and by attorney and announced ready for trial, waived a jury, and submitted the matters in controversy, as well of fact as of law, to the court, and the court, having heard the pleadings, evidence, and argument of counsel, doth find that the law and facts are with the defendant.

It is therefore ordered, adjudged, and decreed by the court that plaintiff, J. F. Standefer, take nothing by his suit, and that defendant, T. K. Wilson, go hence without day and recover of and from plaintiff, J. F. Standefer, all costs in this behalf incurred, for which let execution issue; to which judgment of the court plaintiff excepts and in open court gives notice of appeal to our court
13 of civil appeals of the third supreme judicial district of Texas, at Austin.

Appeal Bond.

In the District Court of Tom Green County, Texas, May Term, 1899.

J. F. STANDEFER
vs.
T. K. WILSON. } No. 1157.

Whereas in the above numbered and entitled cause, pending in the district court of Tom Green county, Texas, and at a regular

term of said court, to wit, on the 27th day of May, 1899, the said defendant, T. K. Wilson, recovered judgment against J. F. Standefer, plaintiff, that plaintiff take nothing by his suit, and that defendant go hence without day and recover of plaintiff all costs, and that execution issue therefor, from which said judgment the said J. F. Standefer, plaintiff, has taken an appeal to the court of civil appeals of the third supreme judicial district of Texas, at Austin, Texas:

Now, therefore, we, J. F. Standefer, as principal, and —— —— and —— ——, as sureties, acknowledge ourselves bound to pay T. K. Wilson the sum of two hundred dollars, conditioned that the said J. F. Standefer, appellant, shall prosecute his appeal with effect and shall pay all the costs which have accrued in the court below and which may accrue in the court of civil appeals and the supreme court.

Witness our hands this the 9th day of June, A. D. 1899.

J. F. STANDEFER.
D. R. SPIVA.
I. G. YATES.

Approved June 10th, 1899.
ED. DUGGAN,
Clerk Dist. Court, Tom Green Co.

I have fixed the probable amount of the costs of this suit in the court of civil appeals, supreme court, and the court below at one hundred dollars, and approve the foregoing bond this the 10th day of June, 1899.

ED. DUGGAN,
Clerk Dist. Court, Tom Green Co., Tex.

14 Filed June 10th, 1899.

ED. DUGGAN,
Clerk Dist. Court, Tom Green Co.

Assignment of Errors.

Filed June 15, 1899.

In District Court of Tom Green County, Texas, May Term, 1899.

J. F. STANDEFER } *vs.* T. K. WILSON. } No. —.

Now comes J. F. Standefer, plaintiff in the above cause, and assigns the following errors committed by the court on the trial of said cause, to wit:

1st Assignment of Error.

The court erred in rendering judgment for the defendant because it appears from the agreed statement of facts on which this case was tried that the commissioner of the general land office on August 20th, 1897, forfeited the Thomas Dolan purchase of the land sued

for for the failure to pay the interest due to January 1st, 1896, and thereafter said land was classified and placed upon the market for sale, when plaintiff became the purchaser thereof on October 21st, 1897, paid the first payment, executed his obligation to the State for the balance of the purchase money, has paid all interest due thereon, and in all things complied with the law authorizing the sale thereof.

2nd Assignment of Error.

The court erred in rendering judgment for the defendant because the forfeiture made and entered August 20th, 1897, by the commissioner of the general land office of the purchase of the land sued for, made by Thomas Dolan, under the act approved July 8th, 1879, and the amendment thereto, approved April 6th, 1881, for failure to pay interest due to January, 1896, on his obligation therefor, was constitutional and valid, vested in the State all her former rights in said land without the necessity of re-entry or judicial ascertainment, and said forfeiture was not an impairment of the obligation of the said Dolan contract within the meaning of
15 section 10, article 1, of the Constitution of the United States.

3rd Assignment of Error.

The court erred in rendering judgment for the defendant for the land sued for because the forfeiture of the Thomas Dolan purchase entered by the commissioner of the general land office, August 20th, 1897, under and by authority of the act approved March 25th, 1897, was not premature, and said act and the forfeiture thereunder was not in violation of section 16, article one, of the constitution of the State of Texas, forbidding retroactive laws.

4th Assignment of Error.

The forfeiture of the Thomas Dolan purchase made and entered August 20th, 1897, was constitutional and valid, because when said Dolan and his vendees failed to pay the interest due to January 1st, 1896, the State had her common-law right of rescission.

A. R. BURGES,
Attorney for Plaintiff.

Filed June 15th, 1899.

ED. DUGGAN,
Clerk Dist. Court, Tom Green Co.

Bill of Costs.

In District Court of Tom Green County.

J. F. STANDEFER } vs. T. K. WILSON. } No. 1157.

Bill of costs.

Filing and docketing	.35
Entering appearance	.15
Filing original answer	.15
Final judgment	.75
Filing statement of facts	.15
Filing and approving appeal bond	1.65
Filing assignment of errors	.15
Transcript, 5,100 words	10.20
Taxing costs and copy	.25
Clerk's costs	$13.80
Sheriff's costs—jury fee	.50
16 Total court costs	$14.30

Clerk's Certificate.

THE STATE OF TEXAS, }
County of Tom Green. }

I, Ed. Duggan, clerk district court in and for Tom Green county, Texas, do hereby certify that the foregoing is a true and correct copy of all the proceedings had in the district court of said county in the case of J. F. Standefer *vs.* T. K. Wilson, No. 1157.

Given under my hand and the seal of the district court of Tom Green county, Texas, this 29th day of July, A. D. 1899.

(Signed) ED. DUGGAN,
[SEAL.] *Clerk District Court, Tom Green County, Texas.*

Endorsed: No. 2335. J. F. Standefer, appellant, *vs.* T. K. Wilson, appellee. From Tom Green county. Applied for by A. R. Burges, attorney for appellant, on the 10th day of June, A. D. 1899. Delivered to A. R. Burges on the 29th day of July, A. D. 1899. Ed. Duggan, clerk district court, Tom Green Co. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Sep. 1, 1899. R. H. Connerly, clerk.

Motion to Advance.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

J. F. STANDEFER, Appellant,
vs.
T. K. WILSON, Appellee. } Appeal from Tom Green County.

Now comes appellant in the above cause and shows to the court that the above cause was submitted to the court below upon an agreed statement of facts made out and certified to under article 1293 of the Revised Statutes of 1895; that said cause has been properly prepared for submission in this court, both parties having prepared and filed briefs herein, as required by the rules of this
17 court; and he further shows that the only question involved in said cause is one of law.

Wherefore he prays that said cause be advanced and heard out of its regular order.

A. R. BURGES,
Attorney for Appellant, J. F. Standefer.

We waive issuance and service of notice of the above motion and join appellant in his request that said cause be advanced and heard out of its regular order.

HILL & WRIGHT,
Attorneys for Appellee, T. K. Wilson.

Endorsed: Mo. 864. No. 2335. In the court of civil appeals, third supreme judicial district. J. F. Standefer, appellant, *vs.* T. K. Wilson, appellee. Motion to advance. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Oct. 3, 1899. R. H. Connerly, clerk.

Order Submitting Motion to Advance. Made October 4th, 1899.

Motion 864.

J. F. STANDEFER
vs.
T. K. WILSON. } No. 2335. Appeal from Tom Green County.

Motion to advance. Motion submitted.

Order Granting Motion to Advance. Made October 11th, 1899.

Motion 864.

J. F. STANDEFER
vs.
T. K. WILSON. } No. 2335. Appeal from Tom Green County.

Motion to advance the cause. The motion is granted and
18 the cause advanced, and, the parties having agreed that the case may be submitted now, the cause is submitted upon briefs of both parties.

Agreement to Submit.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

J. F. STANDEFER, Appellant,
vs.
T. K. WILSON, Appellee.

Comes now appellant and appellee in the above numbered and entitled cause and, having filed their briefs and printed arguments therein, waive the privilege of oral argument and submit the cause upon briefs and argument on file.

A. R. BURGES,
Attorney for Appellant, J. F. Standefer.
HILL & WRIGHT,
Attorneys for Appellee, T. K. Wilson.

Endorsed: No. —. In the court of civil appeals, third supreme judicial district of Texas. J. F. Standefer, appellant, *vs.* T. K. Wilson, appellee. Agreement for submission. Filed in court of civil appeals, 3d supreme judicial district, Austin, Texas, Oct. 11, 1899. R. H. Connerly, clerk.

Order Submitting Cause. Made October 11th, 1899.

J. F. STANDEFER *vs.* T. K. WILSON. No. 2335. Appeal from Tom Green County.

Submitted upon briefs of both parties.

Order Certifying Questions to Supreme Court. Made November 15th, 1899.

Questions were certified to the supreme court in the following cause, to wit:

19 J. F. STANDEFER *vs.* T. K. WILSON. No. 2335. Appeal from Tom Green County.

Answer of Supreme Court to Questions Certified.

J. F. STANDEFER *vs.* T. K. WILSON. No. 840. Certified Questions from Third District.

The questions embraced in the following certificate are presented for our decision by the court of civil appeals for the third district:

"The land involved in this suit is public school free land, the sale of which was authorized under the act of the legislature of Texas

approved July 8th, 1879, and the amendment thereto approved April 6th, 1881, and was duly and regularly placed upon the market for sale under said acts, when one Thomas Dolan became the purchaser thereof, complying with the provisions of the law in affecting the purchase. The appellee claims title under the Dolan purchase. Default in the payment of the interest due under the Dolan purchase having been made January 1st, 1896, the commissioner of the general land office, on August 20th, 1897, declared a forfeiture of said purchase without re-entry or judicial ascertainment, and the land was duly and regularly reclassified and appraised under chapter 47 of the Acts of 1895 and the amendment thereto, chapter 129, Acts of 1897, and placed upon the market and purchased by appellant as an actual settler. The forfeiture declared August 20th, 1897, was under and by virtue of the act of the legislature of the State of Texas approved March 5th, 1897. The contention of appellant is that this forfeiture was valid, and his purchase thereafter vested in him title to said land, subject to the payment of the purchase money therefor to the State. The contention of appellee is that the forfeiture declared August 20th, 1897, whether done by virtue of the act approved March 5th, 1897, or any other act of the legislature, was invalid and did not affect his right in the land, because the Dolan purchase, under which he held title, having been made under the act approved April 6th, 1881, which provided for a forfeiture on default of payment of interest by a judicial ascertainment, that method of forfeiture or rescission became and was a part of the contract, and any subsequent act of the legislature which authorized a forfeiture of a purchase under said act without judicial ascertainment was an impairment of the obligations of contract and is in violation of section 10, art. 1, of the Constitution of the United States. The question was submitted to the court below, which held the forfeiture invalid and rendered judgment for the appellee.

"The above statement is taken from the brief of appellee, which we find substantially correct. The court of civil appeals, through its chief justice, certifies to the supreme court, under the facts as stated, the following questions:

"1. Did the State, through its commissioner of the land office, without judicial proceedings, have the authority to legally declare a forfeiture of the Dolan title on account of the failure to pay the interest, as stated?

"2. Are the principles of law, as decided by the supreme court of this State in the case of Fristoe *vs.* Blum, 45 S. W., 998, applicable and controlling of the question certified?"

In the case of Fristoe *vs.* Blum it was affirmed that when the State becomes a party to a contract with a citizen the same law applies to it as under like conditions govern the contracts of individuals, and when the contract in any form comes before a court the rights and obligations of the contracting parties must be adjudged upon the same principles as if both the contracting parties were private persons. Applying the proposition to a contract for the sale and purchase of school lands under the act of 1883, it was further said that, on the one hand, the rights of the purchaser were

the same as if the vendor had been a citizen instead of the State, and that so long as he complied with his obligation to pay interest as it matured the State could not deprive him of the land; and, on the other, that upon his breach of his obligation by a failure
21 to pay interest the State had the same right which an individual under a like contract would have had to rescind the sale and to resume control of the land. The statute under which the sale in question in that case was made provided in terms for a non-judicial forfeiture upon default in payment of interest installments, which provision was conceded, for the purposes of the decision, to have been subsequently repealed, but it was held that authority could be given to the commissioner of the general land office by a still later statute to exercise the State's right of rescission, arising from the purchaser's breach of his obligation to pay the interest. As to this, the court said:

"But it is said that a construction of section 11 which would give to the commissioner of the general land office the authority to enter a forfeiture, as in this case, would render the act unconstitutional, because it would be giving to it a retroactive effect by which it would violate the obligation of the contract. A sufficient answer, so far as this case is concerned, to that proposition would be that this contract was entered into when such a law existed and provided for the doing of the very thing that the commissioner has done, and the repeal of that law could not constitute, on the part of the State, an obligation that it should not be restored in the future. We prefer, however, to put this decision upon the broader ground and stronger position that where a right exists the legislature may give a new remedy, provided it does not deprive either party of a substantial right. Sutherland *vs.* De Leon, 1 Texas, 305; Johnson *vs.* Taylor, 60 Texas, 362."

Neither that decision nor the principles declared in the opinion are questioned by appellee, but his counsel contend that this case is not governed by them, because the act of 1879, under which the contract here in question was made, provided for a judicial forfeiture of the rights of the purchaser for non-payment of interest, and that the acts of 1897, which undertook to substitute action by the commissioner of the general land office, if applicable to such contracts, is unconstitutional, both because it is retroactive and because it impairs the obligation on contracts. This contention is
22 based upon the assumption that the provision of the act of 1879 for a judicial forfeiture became a part of the contract and fixed, by the agreement of the parties, the only method of determining the rights of the purchaser for default in payment of interest.

If the provision referred to is to be considered a term of the contract specially providing for such a remedy, it may be true that it should be treated as prescribing the exclusive mode of rescission, or, in the language of the act itself, of "forfeiture," and that a subsequent law, which undertook to substitute another mode, would be subject to the objection urged.

On the other hand, we think it must be conceded that if the stat-

ute of 1879 simply had the effect of providing for the breach of the contract a remedy which was not stipulated for in the contract itself, and which was not in itself essential to the full enjoyment or exercise of the rights or the enforcement of the duties arising from it, but which could be supplanted by another remedy, without taking away or impairing such rights and duties, a subsequent statute merely working such a change in the remedy would not be repugnant to any constitutional provision.

The statute required that after the preliminaries by which the land was to become subject to purchase had been arranged a person desiring to purchase should make application to the surveyor, designating the land intended; that the surveyor should record the application and deliver it to the applicant; that the applicant should forward the application with one-tenth of the appraised value of the land to the State treasurer; that the treasurer should enter such payment to the credit of the applicant and issue and forward his receipt for such payment, together with the application, to the commissioner of the land office; that the commissioner should file the application and receipt in his office and issue his certificate, stating the amount paid to the treasurer and the quantity and valuation of the land applied for, which should authorize the surveyor to survey the land and enter same on his books as sold, and that he should not entertain another application to purchase the same land until notified of their forfeiture, "as hereinafter specified;"
23 that so soon as the application had been received by the surveyor the applicant should execute his obligation for the balance of the appraised value of the land, stipulating to pay one-tenth of such amount on the first day of January of each year, with ten per cent. interest on such amount of the principal as may be due at the date of each payment, provided that the purchaser might pay the entire purchase-money at date of purchase or such amount of principal and interest as might be due at any time subsequent, and that any payment of principal except the first might be deferred for one or more years, but all payments of principal and interest "must be made" in ten years, and all interest "must be paid" annually on or before the first day of March of each year; that upon presentation of the certificate of the commissioner the surveyor should survey the land and record and forward to the commissioner the field-notes, and the obligation for purchase-money should be forwarded to the commissioner and by him registered and delivered to the treasurer.

These provisions are contained in sections 6, 7, 8, 9, and 10 of the act. Section 12 provides that if upon the first day of March following the maturity of any payment the interest thereon has not been paid to the treasurer and his receipt filed with the commissioner, the latter shall notify the proper county or district attorney of such failure, and the latter shall institute proceedings to forfeit the purchase, and thereon judgment of forfeiture shall be entered upon failure of the purchaser to show that the interest has been paid as provided, and upon receipt of such judgment the commissioner shall

endorse the application of the purchaser forfeited, and the land shall then be subject to resale.

The act of 1897, under which the commissioner took the action the effect of which is in question, authorized the commissioner, when any portion of the interest due by purchasers of such lands has not been paid, to declare a forfeiture of the purchase without judicial aid and gave to his action the effect of putting an end to the contract. That this statute by its terms applies to cases such as this is not disputed.

We think it clear that all of the terms of the contract be-
24 tween the State and a purchaser under the act of 1879 are contained in sections 6, 7, 8, 9, and 10, above outlined, and their rights, the obligations of their contract, arise from a compliance with those provisions. The contract there provided for is an executory contract of sale and purchase, which arises upon acceptance of and compliance with the stated terms of the offer made by the State for the sale of the lands. The purchaser presents his application, makes the cash payment, causes the land to be surveyed, and executes his obligation to perform the things to be done in the future. The contract then is complete, and its terms are fixed. Jumbo Cattle Co. *vs.* Bacon & Graves, 79 Tex., 12. Both the State and the purchaser are bound so long as there is compliance with the obligation—the purchaser to make the further payments, and the State, upon completion thereof, to grant the land to the purchaser; but no title passes, and a right of rescission in the State may arise just as it might arise in an individual upon default in performance on the part of the other party.

This right might be exercised either by legislative act or by the act of some officer properly empowered thereto. This is the doctrine of Fristoe *vs.* Blum. The statute of 1879 does not give authority to any officer to rescind without judicial action; but the right of rescission existed in the State, and its exercise might be subsequently authorized through the law-making power, and an exercise of it, based upon the default of the other party, would not be a denial of any right of his. It could only be held that the right of rescission for default of the purchaser did not exist by holding that the contract provided that it should not exist, or that it should be exercised in a particular manner; but the contract embraces no such provision. There is no undertaking on the part of the State with the purchaser that the remedy prescribed in this statute, and no other, shall be pursued, unless it is to be implied from the mere presence of the provision in the statute, and we think it well settled that no such implication arises. In the proposition often stated in the decisions that parties contract with reference to existing laws, and that such laws become a part of the contract, the refer-
25 ence is to those laws which determine and fix the obligation of the contract, the correlative rights and duties springing from it, and not to laws of mere procedure prescribing remedies. With reference to these, there is ordinarily no obligation arising, but the contract is made in contemplation of the power of the legislature to change them. Of course, all remedy cannot be taken

away, nor can the existing remedy be so altered as to take away or impair any of the rights given by the contract as interpreted by existing law.

It is also true that a specific remedy provided by the contract itself cannot be changed by legislation, because it constitutes a part of the contract. Loan Co. *vs.* Hardy, 85 Tex., 610.

But none of these limitations on legislative power are applicable to this legislation. The act of 1897 simply enforces a right which existed in the State from the formation of the contract. It takes away no right of the purchaser, unless it can be said that he had the right to demand that the particular remedy provided by the act of 1879 should be followed. This could only be true if the contract made that remedy exclusively applicable, which was not the case.

That prompt payment of interest installments was made an essential part of this contract is made very clear by the terms of the statute, as well as by its purpose to provide available funds annually for the support of the public schools, and that a breach of his obligation to make such payment on the part of the purchaser gave the State the right to rescind the contract is equally clear. If the facts did not exist to authorize the action taken by the commissioner, that could be made to appear whenever such action came in question in the courts, and thus the purchaser could be deprived of no right by such action. The statute could only be taken as authorizing rescission when the right of rescission existed.

We think it also plain that such a statute is not forbidden by section 4, article 7, of the constitution, which forbids the legislature to grant relief to purchasers of school lands.

26 We answer both questions in the affirmative.

F. A. WILLIAMS,
Associate Justice.

Opinion delivered January 15th, 1900.

CLERK'S OFFICE, SUPREME COURT.

I, Chas. S. Morse, clerk of the supreme court of Texas, hereby certify that the foregoing seven pages contain a true and correct copy of the opinion of the supreme court in cause No. 840, J. F. Standefer, appellant, *vs.* T. K. Wilson, appellee. Certified questions from third district.

Witness my hand and the seal of said court this the 1st day of February, A. D. 1900.

[SEAL.] CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

JANUARY 15TH, 1900.

J. F. STANDEFER *vs.* T. K. WILSON. } No. 840. Certified Questions from Third District.

Opinion delivered by Associate Justice Williams.

"It is ordered by the court that a copy of the opinion herein delivered be certified to the court of civil appeals for the third supreme

judicial district, and that said cause be therein proceeded with in accordance with said opinion."

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the order made by the supreme court in the above styled and numbered cause.

Witness my hand and the seal of said court this the 1st day of February, A. D. 1900.

[SEAL.]

CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

Endorsed: No. 840. J. F. Standifer *vs.* T. K. Wilson. Certified copy of opinion and order of the supreme court. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Jan. 31, 1900. R. H. Connerly, clerk.

27 *Bill of Costs of Supreme Court on Certified Questions.*

CLERK'S OFFICE, SUPREME COURT.

J. F. STANDEFER *vs.* T. K. WILSON. } No. 840. Tom Green Co. Certified Copy Bill of Costs in Supreme Court.

Filing record	.50
Docketing cause	.50
Entering appearances	1.00
Filing briefs, 2	.60
Filing 2 extra papers	.60
Entering judgment	1.00
Taxing costs	.50
Certified copy of bill of costs	1.00
Recording opinion	5.40
Certified copy of opinion	5.40
Orders	1.00
Cert. copy judg. to C. C. A.	1.00
2 notices to counsel	2.00
Total	$20.50

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and the seal of said court, at Austin, this the 1st day of Febr'y, 1900.

[SEAL.]

CHAS. S. MORSE, *Clerk*.

Endorsed: No. 840. Certified copy bill of costs in supreme court, Austin. J. F. Standefer *vs.* T. K. Wilson. $20.50. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, January 31, 1900. R. H. Connerly, clerk.

28 *Judgment of Court of Civil Appeals, Rendered February 7th, 1900.*

J. F. STANDEFER *vs.* T. K. WILSON. } No. 2335. Appeal from District Court of Tom Green County.

Opinion by Chief Justice Fisher.

This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the court that there was error in the judgment, it is therefore considered, adjudged, and ordered that the judgment of the court below be reversed, and, this court now proceeding to render such judgment as should have been rendered by the court below, it is therefore considered, adjudged, ordered, and decreed that the appellant, J. F. Standefer, plaintiff in the court below, do have and recover of and from the appellee, T. K. Wilson, defendant in the court below, the following-described real estate, to wit, section No. 42, in district No. 11, in the name of S. P. R'y Co., containing 640 acres of land situated in Tom Green county, Texas, and the title and possession thereof, and that he have all necessary writs and process to place him in possession thereof, together with all costs in this behalf expended, both in this court and in the court below, for which execution may issue, and that this decision be certified below for observance.

Opinion of Court of Civil Appeals, Delivered February 7th, 1900.

J. F. STANDEFER *vs.* T. K. WILSON. } No. 2335. Appeal from Tom Green County.

Opinion.

The answer of the supreme court to the questions certified in this case settles it in favor of the appellant. The certificate, which is set out in the opinion of the supreme court, fully states all
29 the facts which *is* necessary to find, and the facts as there stated are adopted as the conclusions of fact found by this court.

In accordance with the opinion of the supreme court, in answering the certified questions we reverse the judgment of the court below and here render in favor of the appellant.

Reversed and rendered.

FISHER,
Chief Justice.

Endorsed: With app. No. 2593. No. 2335. J. F. Standefer *vs.* T. K. Wilson. Appeal from Tom Green county. Opinion. Reversed and rendered. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, February 7, 1900. R. H. Connerly, clerk. Filed in supreme court Mar. 19, 1900. Chas. S. Morse, clerk.

Motion for Rehearing.

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

J. F. STANDEFER, Appellant,
vs.
T. K. WILSON, Appellee. } No. 2335.

Motion for rehearing.

Now comes appellee, T. K. Wilson, and moves the court to grant him a rehearing in this cause and to affirm the judgment of the district court, because he says this court erred in reversing the judgment of the district court and rendering judgment for appellant, upon the following grounds, to wit:

First. The act of July 8th, 1879, under which the land in question was purchased, and under which purchase appellee holds title, having provided in section 12 for the forfeiture of said contract, in event of default in payment of annual interest, by a judicial proceeding, that act became a part of the contract between the State and the purchaser and his vendees, and the act of March 25, 1897, which authorized a forfeiture of that contract of purchase without judicial ascertainment or proceedings, was and is in violation of section 10, article 1, of the Constitution of the United States, as impairing the obligation of the contract, and the forfeiture declared August 20, 1897, by the commissioner of the general land office of the contract under which appellee held and claimed title, having made by virtue of the act of March 25, 1897, without any judicial proceeding, was therefore illegal and void and did not affect appellee's title.

Second. The legislature having provided by section 12 of the act of July 8, 1879, how purchases of school lands made thereunder were to be forfeited, that section became and is a part of the obligation of the contract between the State and the purchaser and secured to the purchaser rights and privileges which could not be taken away by subsequent legislation without impairing the obligation of the contract.

Third. The application of Thomas Dolan to purchase the land in question having been made in accordance with the provisions of the act of July 8, 1879, and the amendment thereto of April 6, 1881, the obligation for the deferred purchase-money executed by him having, by its expressed terms, bound him to "comply strictly with all the conditions and requirements and subject to all the penalties contained and prescribed in" said acts, by the expressed terms of said written obligation made section 12 of the act of July 8, 1879, a part of the contract and prescribed by expressed terms how a forfeiture was to be had of that purchase, and section 15 of said act made the vendee of said Thomas Dolan "liable to the obligation and penalties imposed upon the original purchaser." This contract, having by its expressed terms referred to and made the purchaser and his ven-

dee subject and liable to the penalties specified and prescribed in said act, made section 12 a part of that contract, prescribing how the penalty of forfeiture was to be had in the event of default in the payment of the annual interest, and the subsequent act of March 25, 1897, having provided for an enforcement of that penalty in a different manner, impaired the obligation of the contract.

Fourth. The power of the commissioner of the general land office to declare a forfeiture is limited to be made in the manner provided by the law under which he acted. The act of March 25, 1897, having provided that if default was made in payment of interest "it shall be the duty of the land commissioner to endorse
31 on the obligation for said land 'lands forfeited,' and shall cause an entry to that effect to be made on the account kept with such purchaser, and thereupon said land shall thereby be forfeited to the State without the necessity of re-entry or judicial ascertainment," it was necessary for the commissioner to make such indorsement upon the obligation, and the indorsement made upon the application to purchase, as was done in this case, is insufficient to divest the purchaser and his vendees of his rights under said contract of purchase.

Wherefore, for the reasons stated, appellee respectfully submits that no valid or legal forfeiture was had of the contract of purchase under which he claims title, and that the State treasurer and commissioner of the land office should have accepted the balance of the purchase-money and interest tendered by him and have issued patent to him for said land, and he respectfully asks that the judgment rendered herein by this court be set aside and the judgment of the district court be in all things affirmed.

HILL & WRIGHT,
Attorneys for Appellee, J. K. Wilson.

Endorsed: With app. No. 2593. Mo. 975. In third court of civil appeals. No. 2335. J. F. Standefer *vs.* T. K. Wilson. Appellee's motion for rehearing. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Feb. 19th, 1900. R. H. Connerly, clerk. Filed in supreme court Mar. 19, 1900. Chas. S. Morse, clerk.

Waiver of Service of Motion for Rehearing.

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

J. F. STANDEFER, Appellant,
vs.
T. K. WILSON, Appellee. } No. 2335.

Motion for rehearing.

I, A. R. Burges, attorney for appellant, J. F. Standefer, do hereby waive the issuance and service of a copy of the motion for rehear-

ing filed in the above numbered and entitled cause by appellee, T. K. Wilson.

A. R. BURGES,
Attorney for Appellant, J. F. Standefer.

32 Endorsed: Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Feb. 19, 1900. R. H. Connerly, clerk.

Order Overruling Motion for Rehearing. Made March 7th, 1900.

Motion 975.

J. F. STANDEFER } No. 2335. Appeal from Tom Green County.
vs.
T. K. WILSON. }

Motion for rehearing.

The motion is overruled.

Petition for Writ of Error.

In the Supreme Court of Texas.

J. F. STANDEFER, Appellant, } No. 2335.
vs.
T. K. WILSON, Appellee. }

Petition for writ of error to the court of civil appeals for the third supreme judicial district of Texas, at Austin.

To the honorable supreme court of Texas:

Your petitioner, T. K. Wilson, hereinafter styled appellee, complaining of J. F. Standefer, hereinafter styled appellant, respectfully presents to this honorable court his application for a writ of error in cause No. 2335, styled J. F. Standefer, appellant, *vs.* T. K. Wilson, appellee, pending in the honorable court of civil appeals for the third supreme judicial district of Texas, at Austin, and shows to this court that appellee resides in Concho county, Texas, and that appellant resides in Tom Green county, Texas, and his attorney of record is A. R. Burges, who resides at San Angelo, in Tom Green county, Texas.

Your applicant shows that this is a suit in trespass to try title to a section of school land bought by appellant, J. F. Standefer,
33 as plaintiff, against your applicant, as defendant, in the district court of Tom Green county, Texas, and upon the trial of said cause in the district court judgment was rendered in favor of appellee on the 27th day of May, 1899, from which said judgment said appellant, J. F. Standefer, appealed to our said court of civil appeals, where the said judgment of the district court was on the 7th day of February, 1900, reversed and judgment rendered in favor of said appellant, J. F. Standefer, in its written conclusions

and opinion on file herein; that afterwards, on February 19, 1900, appellee, your applicant herein, filed in said court of civil appeals his motion for rehearing, and on March 7, 1900, said court of civil appeals overruled and refused said motion for a rehearing.

As grounds for writ of error your applicant shows that the honorable court of civil appeals aforesaid, in its opinion, conclusions, and judgment, has erred on points of law involved in this case and certain of its findings of fact, all of which were duly presented in said motion for a rehearing filed in said court of civil appeals by your applicant, in the following particulars, to wit:

First Ground of Error.

The court of civil appeals erred in reversing the judgment of the district court and rendering judgment for appellant because the act of July 8, 1879, under which the land in question was purchased and under which purchase appellee holds title, having provided in section 12 for the forfeiture of said contract in event of default in payment of annual interest by a judicial proceeding, that act became a part of the contract between the State and the purchaser and his vendees, and the act of March 25, 1897, which authorizes a forfeiture of that contract of purchase without judicial ascertainment or proceedings, was and is in violation of section 10, article 1, of the Constitution of the United States as impairing the obligation of the contract, and the forfeiture declared August 20th, 1897, by the commissioner of the general land office of the contract under which appellee held and claimed title, having been made by virtue of the act of March 25, 1897, without any judicial proceeding, was therefore illegal and void.

34 *Second Ground of Error.*

The court of civil appeals erred in reversing the judgment of the district court and rendering judgment for appellant because the legislature having provided by section 12 of the act of July 8, 1879, how purchases of school land made thereunder were to be forfeited, that section became and is a part of the obligation of the contract between the State and the purchaser and secured to the purchaser rights and privileges which could not be taken away by subsequent legislation without impairing the obligation of the contract.

Third Ground of Error.

The court of civil appeals erred in reversing the judgment of the district court and rendering judgment for appellant because the application of Thomas Dolan to purchase the land in question, having been made in accordance with the provisions of the act of July 8, 1879, and the amendment thereto of April 6, 1881, the obligation for the deferred purchase-money executed by him having by its expressed terms bound him to "comply strictly with all the conditions and requirements and subject to all the penalties contained and prescribed in" said acts by the expressed terms of said

written obligation, made section 12 of the act of July 8, 1879, a part of the contract and prescribed by expressed terms how a forfeiture was to be had of that purchase, and section 15 of said act made the vendee of said Thomas Dolan "liable to the obligation and penalties imposed upon the original purchaser." This contract, having by its expressed terms referred to and made the purchaser and his vendee subject and liable to the penalties specified and prescribed in said act, made section 12 a part of that contract, prescribing how the penalty of forfeiture was to be had in event of default in payment of the annual interest, and the subsequent act of March 25, 1897, having provided for an enforcement of that penalty in a different manner, impaired the obligation of the contract.

Additional Statement.

In addition to the statement as contained in the statement as made by the court of civil appeals, we beg to call the court's attention to the obligation executed by Thomas Dolan for the
35 deferred purchase-money due on said land, which will be found in the transcript, beginning on page 6, line 20, and ending on page 7, line 27, which said obligation is as follows, to wit: "$608.00. Note for purchase-money, common-school lands. For value received, I, the subscriber hereto, do promise to pay to the governor of the State of Texas and his successors in office, the sum of six hundred and eight dollars, with interest thereon at the rate of 8 % per annum, as hereinafter specified, the same being the purchase-money for the following-described tracts of land this day purchased by me from the State of Texas in accordance with the terms of an act of the legislature of said State, viz.: 'An act to amend the caption and sections 1, 2, 3, 4, 5, 6, 7, and 8 of an act to provide for the sale of alternate sections of land in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund; to provide for the investment of the proceeds and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6th, 1881,' to wit: survey 42, district 11, surveyed for the S. P. R. R. Co., Concho county. I am to pay or cause to be paid into the treasury of the State of Texas on the first day of January in each year, one-twentieth of the above amount, together with the annual interest of eight per cent. upon the unpaid principal until this entire obligation is liquidated. And it is expressly understood that I am to comply strictly with all the conditions and requirements and am subject to all the penalties contained and prescribed in the above-recited act. Witness my hand, this the 1st day of May, 1882. (Signed) Thomas Dolan."

Argument.

It is respectfully submitted that the language of said obligation, to wit, "And it is expressly understood that I am to comply strictly *to* all the conditions and requirements and am subject to all the

penalties contained and prescribed in the above-recited act," made section 12 of the act of July 8, 1897, providing for the method of forfeiture in event of default in payment of interest, a part of
36 said contract. There are no penalties contained and prescribed in the act of July 8, 1879, except that of forfeiture in default of payment of the annual interest, and when the purchaser and the State enter- into its contract binding the purchaser to comply with all the conditions and requirements and subjecting him to all the penalties contained in said act they made whatever parts of said act prescribing a penalty a part of that contract. Therefore if any question could arise as to whether section 12 was or was not a part of the contract it is removed by reference to the contract itself, and it is respectfully submitted that, section 12 being a part of the contract and prescribing how a forfeiture could be had, the subsequent act of March 25, 1897, authorizing a forfeiture by the different method and without a judicial proceeding, as prescribed in the act of 1879, was unconstitutional and void as impairing the obligation of the contract.

Fourth Ground of Error.

The court of civil appeals erred in reversing the judgment of the district court and rendering judgment for appellant because the power of the commissioner of the general land office to declare a forfeiture is limited to be made in the manner provided by the law under which he acted. The act of March 25, 1897, having provided that if default was made in payment of interest "it shall be the duty of the land commissioner to endorse on the obligation for said land, 'Lands forfeited,' and shall cause an entry to that effect to be made on the account kept with such purchaser, and thereupon said land shall thereby be forfeited to the State without the necessity of re-entry or judicial ascertainment," it was necessary for the commissioner to make such endorsement upon the obligation, and the endorsement made upon the application to purchase, as was done in this case, is insufficient to divest the purchaser and his vendees of his rights under said contract of purchase.

Statement.

In addition to the statement of facts contained in the opinion of the court, we beg to call the court's attention to subdivision 12 in the agreed statement of facts contained in the transcript,
37 beginning on page 9, line 6, and ending on page 9, line 20, in which it is shown the commissioner of the land office in making the forfeiture under act of March 25, 1897, "endorsed on the application of said Thomas Dolan, given as aforesaid, 'Land forfeited,' and caused an entry to that effect to be made on the account kept with said Thomas Dolan purchased and declared said land forfeited to the State without necessity of re-entry or judicial ascertainments.

Argument.

We respectfully submit that the legislature, in prescribing how a forfeiture should be had when changing the method from that of the judicial ascertainments as required by the act of July 8, 1879, to the non-judicial procedure as prescribed in the act of March 25, 1897, limited the forfeiture to be made in the manner provided by the law under which the forfeiture was declared, and unless the forfeiture was evidence in the manner as required by the act of March 25, 1897, the action of the commissioner of the land office would be ineffectual to divest the purchaser of his rights under his contract of purchase. The commissioner of the land office endorsed upon the application, "Lands forfeited," but did not make the endorsement upon the obligation, as required by the act of March 25, 1897. Is this evidence of a legal forfeiture under that act? We submit not. The act of March 25, 1897, in authorizing a forfeiture for default in payment of interest provides: "It shall be the duty of the land commissioner to endorse on the obligation for said lands, 'Lands forfeited,' and shall cause an entry to that effect to be made on the account kept for such purchase; and thereupon said land shall thereby be forfeited to the State without the necessity of reentry or judicial ascertainment."

The act under which the purchase was originally made provided for the judicial forfeiture, and the act of March 25, 1897, intended to change that method and prescribe another to be had without judicial ascertainments, but to be evidence in the manner prescribed by that act. There can be no question that it was the intention of the legislature, in the language used, to require certain things to be done in order to effect the forfeiture, and the commissioner
38 of the land office, in carrying that law in effect, could do so only in the manner limited in the act. The language of the act "and thereupon said land shall thereby be forfeited" leaves no question as to what is required to be done in order to effect the forfeiture. "Thereby" has a well-defined meaning and conveys to the mind that certain things are required. Webster defines it to mean, "by that; by that means; in consequence of that." When, then, the legislature prescribed certain things to be done by the land commissioner in order to forfeit the land and furnish a record thereof, and then declares that said land shall thereby be forfeited, it meant that it could be done in consequence of or by the means prescribed in the act. Therefore, when the commissioner endorsed upon the application of the purchaser, land forfeited, it did not divest the purchaser of his rights under the contract, as a forfeiture of the land had not been taken by judicial proceeding, as required by section 12 of the act of 1879, or by endorsement upon the obligation of the purchaser, as required under the act of March 25, 1897, and the records fail to show a valid legal forfeiture unless this court can hold that the declaration of forfeiture by the commissioner and his causing an entry to that effect to be made upon the account kept with the purchaser was a compliance with the law. This could not be true, because the law prescribes what shall con-

stitute the evidence of that forfeiture, and the acts of the commissioner done in a different manner than that prescribed by that act could not furnish the evidence of a valid and legal forfeiture.

Wherefore appellee prays for a writ of error to the court of civil appeals for the third supreme judicial district, and that its judgment be reversed, and that the judgment of the district court be in all things affirmed.

HILL & WRIGHT,
Attorneys for Appellee, T. K. Wilson.

Endorsed: App. No. 2593. J. F. Standefer, appellant, *vs.* T. K. Wilson, appellee. Appellee's application for a writ of error. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Mar. 19, 1900. R. H. Connerly, clerk. Filed in supreme court Mar. 19, 1900. Chas. S. Morse, clerk.

39

CLERK'S OFFICE, SUPREME COURT.

I, Chas. S. Morse, clerk of the supreme court of Texas, hereby certify that the above and foregoing six pages contain a true and correct copy of the petition for writ of error in application No. 2593, T. K. Wilson (applicant) *vs.* J. F. Standefer, and which said petition is now on file in this office.

Witness my hand and the seal of said court this the 28th day of April, A. D. 1900.

[SEAL.] CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

Endorsed: Appl. No. 2593. T. K. Wilson *vs.* J. F. Standefer. Certified copy of petition for writ of error. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Apr. 28, 1900. R. H. Connerly, clerk.

Judgment of Supreme Court, Refusing Application for Writ of Error.

In Supreme Court of Texas, 3rd District.

T. K. WILSON
vs.
J. F. STANDEFER.

M'CH 22D, 1900.

This day came on to be heard the application of T. K. Wilson for a writ of error to the court of civil appeals for the third district, and the same having been duly considered, it is ordered that said application be refused; that the applicant, T. K. Wilson, pay all costs incurred on this application.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court on said application for a writ of error.

Witness my hand and the seal of said court this the 23rd day of March, A. D. 1900.

[SEAL.] CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

40 Endorsed: No. 2593. T. K. Wilson *vs.* J. F. Standefer. Copy of judgment in supreme court. Application for writ of error refused. Filed in court of civil appeals, third supreme judicial district, March 23rd, 1900. R. H. Connerly, clerk.

Bill of Costs of Supreme Court.

CLERK'S OFFICE, SUPREME COURT.

T. K. WILSON *vs.* J. F. STANDEFER. } No. 2593. Certified Copy Bill of Costs of Supreme Court.

Filing application	.50
Docketing petition	.50
Entering appearance of counsel	.50
Filing two briefs	.60
Filing three papers	.90
Entering orders	.50
Entering judgment on application	1.00
Certified copy of judgment	1.00
Taxing costs of application	.50
Certified copy bill of costs	1.00
Total	$7.00

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and the seal of said court, at Austin, this the 23rd day of M'ch, 1900.

[SEAL.] CHAS. S. MORSE, *Clerk.*

Endorsed: Application No. 2593. Certified copy bill of costs in supreme court, Austin, T. K. Wilson *vs.* J. F. Standefer, $7.00. Filed in court of civil appeals, third supreme judicial district of Texas, March 23rd, 1900. R. H. Connerly, clerk.

41 *Supersedeas Bond on Writ of Error.*

J. F. STANDEFER *vs.* T. K. WILSON. } No. 2335.

Know all men by these presents that we, T. K. Wilson, as principal, and F. L. Harris and M. L. Mertz, as sureties, are held and firmly bound unto J. F. Standefer in the full and just sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seal and dated this 19th day of April, in the year of our Lord nineteen hundred.

Whereas lately, at a term of the court of civil appeals in and for the third supreme judicial district of Texas, in a suit depending in said court between J. F. Standefer, as appellant, and T. K. Wilson, as appellee, a judgment was rendered against said T. K. Wilson, appellee, and said T. K. Wilson having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said J. F. Standefer, citing and admonishing said J. F. Standefer to be and appear at a Supreme Court of the United States to be holden at Washington, within thirty days from the date hereof:

Now, therefore, the condition of the above obligation is such that if the said T. K. Wilson shall prosecute his writ of error to effect and answer all damages and costs if he shall fail to make his plea good, then the above obligation shall be void; otherwise to remain in full force and effect.

THOS. K. WILSON, *Principal.*
F. L. HARRIS, *Surety.*
M. L. MERTZ, *Surety.*

42 I, F. L. Harris, do solemnly swear that I am worth in my own right at least the sum of one thousand dollars, after deducting from my property all that which is exempt by the constitution and laws of the State from forced sale and after the payment of all my debts and after satisfying all encumbrances on my property which are known to me: that I reside in the county of Tom Green, State of Texas, and have said property in said State liable to execution worth one thousand dollars or more.

F. L. HARRIS.

Sworn to and subscribed before me this 19th day of April, 1900.

[SEAL.] W. B. HUNTER,
Notary Public in and for Tom Green County, Texas.

I, M. L. Mertz, do solemnly swear that I am worth in my own right at least the sum of one thousand dollars, after deducting from my property all that which is exempt by the constitution and laws of the State from forced sale and after the payment of all my debts and after satisfying all encumbrances on my property which are known to me; that I reside in the county of Tom Green, State of Texas, and have said property in said State liable to execution worth one thousand dollars or more.

M. L. MERTZ.

Sworn to and subscribed before me this 20th day of April, A. D. 1900.

[SEAL.] J. L. MALONE,
Notary Public in and for Tom Green County, Tex.

Approved this 28th day of April, 1900.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

43 Endorsed: T. K. Wilson *vs.* J. F. Standefer. Supersedeas bond on writ of error. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Apr. 28, 1900. R. H. Connerly, clerk.

Assignment of Errors.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

T. K. WILSON, Plaintiff in Error,
vs.
J. F. STANDEFER, Defendant in Error.

Now comes plaintiff in error in the above-entitled cause and on writ of error from the Supreme Court of the United States says that in the record and proceedings in said cause and the judgment therein rendered in the court of civil appeals of the third supreme judicial district of Texas there is manifest error to his prejudice, which he assigns as follows:

First.

The said court of civil appeals erred in deciding against the validity of an authority exercised under the United States drawn in question in this cause.

Second.

The said court of civil appeals erred in deciding against the title, right, privileges, and immunity specially set up and claimed by said plaintiff in error under the Constitution and statutes of and authority exercised under the United States.

Third.

The said court of civil appeals erred in deciding in favor of the validity of statutes and authority exercised under the State of Texas, drawn in question in this cause, on the ground of their being repugnant to the Constitution and laws of the United States.

Fourth.

The said court of civil appeals erred in giving validity to the provisions of the act of the legislature of the State of Texas
44 approved March 25th, 1897, drawn in question in this cause under a construction thereof, which impaired the obligation of the contract entered into between the State of Texas and Thomas Dolan, under which plaintiff in error claims, under and by virtue of the provisions of the act of the legislature of the State of Texas approved July 8th, 1879, and amendment thereto approved April 6th, 1881.

Fifth.

The said court of civil appeals erred in sustaining and affirming the validity of the authority exercised under the State of Texas by the commissioner of the general land office of Texas in forfeiting,

canceling, and annulling the contract entered into between the State of Texas and Thomas Dolan, under which plaintiff in error claims, drawn in question in this cause, on the ground of its being repugnant to the Constitution and laws of the United States.

Sixth.

The said court of civil appeals erred in sustaining and affirming the action of the State of Texas, through its commissioner of the general land office, exercised under and by authority of the act of the legislature of Texas approved March 25th, 1897, in forfeiting and canceling without judicial ascertainment and proceedings the contract of purchase entered into between the State of Texas and Thomas Dolan, under which plaintiff in error claims; which said contract was made and entered into under and by virtue of the provisions of the act of the legislature of Texas approved July 8th, 1879, and the amendment thereto approved April 6th, 1881; by the terms and provisions of which said act and the contract so entered into thereunder it was provided as a part thereof that a forfeiture of said contract for a default in payment of the annual interest due thereon should be had by judicial ascertainment and proceedings, the validity of which said act of March 25th, 1897, and the action of the commissioner of the general land office so exercised thereunder was drawn in question in this cause by plaintiff in error on the ground of their being repugnant to the Constitution and laws of the United States as impairing the obligation of the contract.

45 Seventh.

The said court of civil appeals erred in reversing the judgment of the district court of Tom Green county rendered in this cause in favor of plaintiff in error and in rendering judgment against plaintiff in error and in favor of defendant in error, and said court erred in not affirming the judgment of the district court of Tom Green county.

Wherefore plaintiff in error, T. K. Wilson, prays that the judgment of said court of civil appeals be reversed, and that the judgment of the district court of Tom Green county, Texas, be in all things affirmed, and for such further proceedings as law and justice may require.

W. A. WRIGHT,
J. W. HILL,
Attorneys for T. K. Wilson, Plaintiff in Error.

Endorsed: T. K. Wilson, plaintiff in error, *vs.* J. F. Standefer, defendant in error. Assignment of errors. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Apr. 28, 1900. R. H. Connerly, clerk.

Bill of Costs of Court of Civil Appeals.

Filing record	.50
Docketing cause	.50
Appearances	1.00
Filing briefs	.80
Filing and entering motions (2)	.70
Orders (7)	3.50
Filing extra papers (11)	1.80
Judgment	1.00
Amount brought forward	$9.80
46 *Amount brought forward*	*$9.80*
Taxing costs	.50
Mandate	1.50
Recording opinion	.15
Certified copy bill of costs	.75
Transcript fee from lower court	10.20
Costs of supreme court	27.50
Notices	3.00
Transcript fee to U. S. Supreme Court	20.00
Copy orders to supreme court	2.00
Total	$75.40

Clerk's Certificate.

CLERK'S OFFICE,
COURT OF CIVIL APPEALS, AUSTIN, TEXAS.

I, R. H. Connerly, clerk of the court of civil appeals, third supreme judicial district of Texas, hereby certify that the foregoing 46 pages contain a true and correct copy of all proceedings had in the district court of Tom Green county, Texas, in the court of civil appeals of the third supreme judicial district of Texas, and in the supreme court of the State of Texas, as the same appear from the papers and files of record in my office in cause No. 2335, styled J. F. Standefer, appellant, *vs.* T. K. Wilson, appellee.

Witness my hand and the seal of said court, at office, at Austin, Texas, this the 5th day of May, A. D. 1900.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY, *Clerk.*

47 J. F. STANDEFER *vs.* T. K. WILSON. } No. 2335.

To any justice of the Supreme Court of the United States or the chief justice of the court of civil appeals in and for the third supreme judicial district of Texas:

Your petitioner, T. K. Wilson, respectfully represents that in the above numbered and entitled cause, then pending therein on appeal

from the district court of Tom Green county, and wherein petitioner, T. K. Wilson, was the only party appellee and J. F. Standefer was the only party appellant, the court of civil appeals in and for the third supreme judicial district *for* the State of Texas, on the 7th day of February, 1900, reversed a judgment in said cause rendered on the 27th day of May, 1899, by the district court of Tom Green county, Texas, in favor of petitioner, T. K. Wilson, as defendant, and against appellant, J. F. Standefer, as plaintiff, and the said court of civil appeals on said 7th day of February, 1900, rendered judgment against your peti-oner as appellee and in favor of said J. F. Standefer, as appellant, for the land described in said suit and all costs of suit; that thereafter and in due time your peti-oner filed *in said court of civil appeals a motion for rehearing*, which was thereafter, on the 7th day of March, 1900, overruled and denied; that thereafter and in due time your petitioner applied in due form and as authorized by law to the supreme court of the State of Texas for a writ of error in said cause to the said court of civil appeals, which application was thereafter, to wit, on the 22nd day of March, 1900, by said supreme court denied and the writ of error prayed for by petitioner refused; whereupon the said judgment of
48 the said court of civil appeals, which is the highest court of said State in which a decision in said suit could be had, became and is final.

And petitioner says that he is aggrieved by the said judgment rendered and proceedings had in said suit in the said court of civil appeals, and that in the said judgment rendered and proceedings had in said cause in said court of civil appeals errors were committed to the prejudice of peti oner, because he says there was in said suit drawn in question the validity of a statute of or an authority exercised under the United States, and the decision in said suit was against their validity, and there was drawn in question the validity of a statute or constitution of or an authority exercised under a State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision in said suit in the said court of civil appeals was in favor of their validity, and that titles, rights, privileges, and immunities were in said suit claimed by petitioner under the Constitution and statutes of and commissions held and authority exercised under the United States, and the decision in said suit was against the titles, rights, privileges, and immunities specially set up and claimed therein by petitioner under such Constitution, statutes, commissions, and authorities, as will hereinafter more fully appear.

Your petitioner says that this suit was instituted on the 16th day of May, 1899, in the district court in and for Tom Green county, Texas, by J. F. Standefer, as plaintiff, against petitioner, T. K. Wilson, as defendant, upon which date plaintiff Standefer filed his original petition in said district court in the statutory proceeding of trespass to try title, praying judgment against said petitioner for the recovery of the title and possession of 640 acres of what is known as school land, situated in Tom Green county, Texas, and de-
49 scribed as section No. 42, in district No. 11, in the name of the Southern Pacific Railway Company; that thereafter, on the

24th day of May, 1899, your petitioner filed in said cause his original answer to said original petitioner, and, in addition to a general demurrer to said petition, he pleaded not guilty, as is provided and required by the laws of Texas in the statutory suits of trespass to try title. The cause was submitted to the district court of Tom Green county upon an agreed statement of facts, it being agreed that the only question involved in the suit was the validity of the forfeiture declared by the commissioner of the general land office of Texas on August 20th, 1897, of the purchase of the land in question, made under the act of the legislature of Texas approved July 8th, 1879, and the amendment thereto approved April 6th, 1881, under which purchase your petitioner claimed title. Your petitioner shows that the land involved in this suit is public free-school land, the sale of which was authorized under the act of the legislature of Texas approved July 8th, 1879, and the amendment thereto approved April 6th, 1881, and was duly and regularly placed upon the market for sale under said acts, when one Thomas Dolan became the purchaser thereof, complying with the provisions of the law in affecting the purchase. Petitioner claims title under the Dolan purchase. Default in payment of the annual interest due under the Dolan purchase having been made January 1st, 1896, the commissioner of the general land office of Texas, on August 20th, 1897, declare- a forfeiture of said purchase without re-entry or judicial ascertainment, and the land was duly and regularly reclassified and appraised under chapter 47 of the Acts of 1895 and the amendment thereto, chapter 129, Acts of 1897, and placed
50 by the State upon the market and purchased by said appellant, J. F. Standefer, as an actual settler. The forfeiture declared by said commissioner on the general land office of Texas on August 20th, 1897, was under and by virtue of the act of the legislature of the State of Texas approved March 25, 1897.

Your petitioner shows that the said act of the legislature of Texas approved July 8, 1879, by the twelfth section thereof prescribed the method of forfeiture of contracts made thereunder, requiring a judicial ascertainment and judgment of court to effect such forfeiture; which said section is as follows:

"SEC. 12. If, upon the first day of March following the maturity of any payment, the interest on money due has not been paid to the State treasurer, and his receipts filed with the commissioner of the general land office, as provided in section eleven of this act, it shall be the duty of said commissioner to notify the county or district attorney of the county in which said land is situated of such failure, giving the name of the purchaser so failing to make payment, with the amount and date of his note, and the amount of principal and interest due at the time of such failure, and upon the receipt of such notice, it shall be the duty of the county or district attorney to cause a writ to be issued and served on the purchaser, or, in case of his death, upon his heirs or legal representatives, requiring him or them to show cause why he or they should not be ejected from such land; and upon his or their failure to show that the annual installment of interest have been paid, as above pro-

vided, a judgment shall be rendered against him or them and a writ of possession shall be issued in favor of the State. That a copy of such judgment, under the signature and seal of the clerk
51 of the court rendering the judgment, shall be forwarded to the State treasurer, who shall immediately indorse the obligation of such purchaser, 'forfeited,' note the fact of such endorsement on the copy of judgment aforesaid, and forward the same to the commmissioner of the general land office. The said commissioner shall file said copy of judgment with the claims of such defaulting purchaser, and shall note such forfeiture on the account kept with said purchaser, and shall notify the surveyor of the county in which said land is situated that said land is again for sale."

Your petitioner shows that no proceedings were had as required by said section twelve aforesaid, but that the forfeiture of said Dolan purchase was made and declared by the commissioner of the general land office, without re-entry or judicial ascertainment, under and by virtue of the first section of the act of the legislature of Texas approved March 25, 1897, which is as follows:

"SECTION 1. Be it enacted by the legislature of the State of Texas, That if upon the first day of November of any year, any portion of the interest due by any person to the State of Texas, for lands heretofore sold by the State of Texas, whether said lands be a part of the public domain, or shall have been heretofore set apart for the public schools, university, or any of the other various State institutions, has not been paid, it shall be the duty of the land commissioner to endorse on the obligation for said lands, 'lands forfeited,' and shall cause an entry to that effect to be made on the account kept *which* such purchaser, and thereupon said land shall thereby be forfeited to the State, without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged and be resold under the provisions of
52 the existing law, or any future law; provided the purchaser of said land shall have the right at any time within six months after such endorsement of 'lands forfeited' to institute a suit in the district court of Travis county Texas against the commissioner of the general land office, for the purpose of contesting such forfeiture, and setting aside the same, upon the ground that the facts did not exist, authorizing such forfeiture, but if no such suit has been instituted as above provided, such forfeiture of the commissioner of the general land office shall then become fixed and conclusive; provided that if any purchaser shall die, or shall have died, his heirs or legal representatives shall have one year in which to make such payment after the first day of November next after such death. This act is cumulative, and is not intended to deny to the State the right to institute any legal proceedings that may be deemed necessary to secure the purchase-money or possession of the land so sold. And this act is intended to be applicable to all purchases heretofore made under any or all of the various acts of the legislature under which land may have been sold by the State."

Your petitioner shows that appellant J. F. Standefer's contention is that the forfeiture declared August 20, 1897, by the commis-

sioner of the general land office was valid and his purchase thereafter vested in him title to said land, subject to the payment of the purchase-money therefor to the State. Your petitioner, as appellee, contended that the forfeiture declared August 20th, 1897, whether done by virtue of the act approved March 25, 1897, or any other act of the legislature, was invalid and did not affect his rights in the land, because the Dolan purchase, under which petitioner held title, having been made under the act approved July 8th,
53 1879, and amendment thereto approved April 6th, 1881, which provided for a forfeiture on default of payment of annual interest by a judicial ascertainment and proceeding, that method of forfeiture or rescission became and was a part of the contract between said purchaser and the State, and any subsequent act of the legislature which authorized a forfeiture of a purchase made under said act without judicial ascertainment was an impairment of the obligation of the contract and is repugnant to and in violation of section 10, article 1, of the Constitution of the United States. The question was submitted to the district court of Tom Green county, Texas, which held the forfeiture invalid and rendered judgment in favor of your petitioner for the land.

Your petitioner further shows that from the judgment so rendered in his favor in the district court aforesaid appellant, J. F. Standefer, appealed to the court of civil appeals for the third supreme judicial district of Texas, and assigned as error the ruling of the said district court in holding that the forfeiture declared August 20th, 1897, by the commissioner of the land office was invalid and an impairment of the obligation of the said Dolan contract and repugnant to section 10, article 1, of the Constitution of the United States.

Your petitioner further shows that while said cause was pending on appeal in the said court of civil appeals, and before said court had rendered any decision therein, the said court of civil appeals, through its chief justice, certified to the supreme court of Texas, as it was authorized and permitted by law to do, the question as to whether the commissioner of the land office without judicial proceedings had the authority to legally declare a forfeiture of the said Dolan title on account of the failure to pay the interest as
54 stated, which said question so certified was answered in the affirmative by the supreme court of Texas by an opinion delivered on January 15, 1900, and thereafter, on the 7th day of February, 1900, the said court of civil appeals for the third supreme judicial district of Texas, in accordance with the opinion of the supreme court of Texas in answering the certified question aforesaid, reversed the judgment of the district court of Tom Green county rendered in favor of petitioner on May 27, 1899, and rendered judgment in favor of appellant, J. F. Standefer, and against petitioner for the land sued for; that thereafter petitioner in due time and form, as required by the law of Texas, filed in the said court of civil appeals a motion for rehearing, praying that it set aside its judgment reversing the judgment of the district court and rendering judgment for appellant, J. F. Standefer, and that the said judg-

ment of the district court be affirmed upon the following grounds to wit:

First.

Because the act of July 8, 1879, under which the land in question was purchased, and under which purchase petitioner holds title, having provided in section 12 for the forfeiture of said contract in event of default in payment of annual interest by a judicial proceeding, that act became a part of the contract between the State and the purchaser and his vendees, and the act of March 25, 1897, which authorized a forfeiture of that contract of purchase without judicial ascertainment or proceedings, was and is in violation of section 10, article 1, of the Constitution of the United States as impairing the obligation of the contract, and the forfeiture declared August 20, 1897, by the commissioner of the general land office of the
55 contract under which petitioner held and claimed title, having been made by virtue of the act of March 25, 1897, without any judicial proceeding, was therefore illegal and void and did not affect petitioner's title.

Second.

Because the legislature having provided by section 12 of act of July 8, 1879, how purchases of school lands made thereunder were to be forfeited, that section became and is a part of the obligation of the contract between the State and purchaser and secured to the purchaser rights and privileges which could not be taken away by subsequent legislation without impairing the obligation of the contract.

Third.

Because the application of Thomas Dolan to purchase the land in question having been made in accordance with the provisions of the act of July 8, 1879, and the amendment thereto of April 6, 1881, the obligation for the deferred purchase-money executed by him having by its expressed terms bound him to "comply strictly with all the conditions and requirements and subject to all the penalities contained and prescribed in" said acts, by the expressed terms of said written obligation made section 12 of the act of July 8, 1879, a part of the contract and prescribed by expressed terms how a forfeiture was to be had of that purchase, and section 15 of said act made the vendee of said Thomas Dolan "liable to the obligation and penalities imposed upon the original purchaser." This contract, having by its expressed terms referred to and made the purchaser and his vendee subject and liable to the penalities specified and prescribed in said act, made section 12 a part of that contract, prescrib-
56 ing how the penalty of forfeiture was to be had in event of default in payment of the annual interest, and the subsequent act of March 25, 1897, having provided for an enforcement of that penality in a different manner, impaired the obligation of the contract.

That thereafter the said court of civil appeals, on March 7th, 1900, overruled and denied said motion for a rehearing, and thereafter

and in due time and form and as authorized by the laws of Texas your petitioner applied to the supreme court of Texas for a writ of error in said cause to the said court of civil appeals upon the same grounds of error urged in his motion for a rehearing in said court of civil appeals, which said application was thereafter, to wit, on the 22nd day of March, 1900, by said supreme court denied, and the writ of error prayed for by petitioner refused; whereupon the said judgment of the said court of civil appeals, which is the highest court of said State of Texas in which a decision in said suit could be had, became and is final.

And your petitioner says that the said court of civil appeals by its judgment in this cause, contrary to subdivision 1 of section 10, article 1, of the Constitution of the United States, gave effect to and sustained the validity of the act of the legislature of Texas approved March 25th, 1897, and the forfeiture of the said Dolan purchase made and declared under and by virtue of said act by the commissioner of the general land office on August 20th, 1897, as impairing the obligation of the contract previously made and entered into between the State of Texas and the said Thomas Dolan, under whose contract petitioner claims title, rights, privileges, and immunities; and petitioner says that the said court of civil ap-
57 peals by its said judgment decided against the validity of an authority exercised under the United States drawn in question in this cause and against the title, rights, privileges, and immunities specially set up and claimed by petitioner under the Constitution and statutes of and authority exercised under the United States and in favor of the validity of statutes of and authorities exercised under the State of Texas drawn in question in this cause on the ground of their being repugnant to the Constitution and laws of the United States.

Your petitioner refers to the assignments of error filed herewith and pray- that the same be considered for the purposes of this petition as a part hereof, and further prays that a writ of error may be allowed and issued herein to the said court of civil appeals in and for the third supreme judicial district of the State of Texas, which now has the record in said suit, for the removal of said cause into the Supreme Court of the United States, to the end that errors in said judgment and the proceedings in said cause may be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, and that the transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the said Supreme Court of the United States.

W. A. WRIGHT,
J. W. HILL,
Attorney for T. K. Wilson, Petitioner.

AUSTIN, TEX., *April 28th*, 1900.

Allowed, with supersedeas, upon furnishing bond in the sum
58 of one thousand dollars conditioned as the law directs.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals,
Third Supreme Judicial District of Texas.

59 [Endorsed:] No. 2335. J. F. Standefer *vs.* T. K. Wilson. Petition for writ of error to Supreme Court of United States. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 28, 1900. R. H. Connerly, clerk.

60 J. F. STANDEFER *vs.* T. K. WILSON. } No. 2335.

Appeal from Tom Green county.

In the above styled and numbered cause, heretofore pending in the court of civil appeals of the third supreme judicial district of Texas, and in which the chief justice of said court has granted a writ of error in said cause, in order to carry the same to the Supreme Court of the United States, the clerk of said court of civil appeals is hereby directed to and ordered to make up the record and transcript in said cause by copying in full the original record now on file in this court, and as a part of the record there shall be appended to the same certified copies of all orders, judgments, and decrees rendered and entered in said cause by the said court of civil appeals and the supreme court of Texas, together with certified copies of all opinions delivered by the courts in said cause. It is further ordered that the clerk of this court file the petition for writ of error which has this day been granted in this cause, together with the bond, which has been approved, and the assignment of errors accompanying same.

Witness the official signature of H. C. Fisher, the chief justice of said court, together with the seal thereof, this the 28th day of April, A. D. 1900.

H. C. FISHER,
Chief Justice Court of Civil Appeals of the Third Supreme Judicial District of Texas.

61 [Endorsed:] No. 2335. J. T. Standefer *vs.* T. K. Wilson. Order allowing writ of error. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 28, 1900. R. H. Connerly, clerk.

62 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of civil appeals in and for the third supreme judicial district of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals in and for the third supreme judicial district of the State of Texas, before you or some of you, being the highest court of the said State in which a decision could be had in the said suit between J. F. Standefer, appellant, and T. K. Wilson, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity,

or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein a title, right, privilege, or immunity was claimed under the Constitution or a treaty or statute of or commission held or authority exercised under the United States and the decision was against the title, right, privilege, or immunity specially set up or claimed under such Constitution, treaty, statute, commission, or authority, a manifest error hath happened, to the great damage of said T. K. Wilson, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,
63 together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of April, in the year of our Lord nineteen hundred.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk Circuit Court of the United States,
Western District of Texas.

Allowed by—
H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and
for the Third Supreme Judicial District of Texas.

64 [Endorsed:] T. K. Wilson, plaintiff in error, *vs.* J. F. Standefer, defendant in error. Writ of error. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 28, 1900. R. H. Connerly, clerk.

65 UNITED STATES OF AMERICA, *ss:*

To J. F. Standefer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of civil appeals in and for the third supreme judicial district of Texas, wherein T. K. Wilson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. C. Fisher, chief justice of the court of civil appeals for the third supreme judicial district of Texas, on this the 28th day of April, in the year of our Lord nineteen hundred.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

66 [Endorsed:] T. K. Wilson, plaintiff in error, *vs.* J. F. Standefer, defendant in error. Citation. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 28, 1900. R. H. Connerly, clerk.

Service of the within citation and receipt of copy thereof admitted this 2nd day of May, 1900.

A. R. BURGES,
Solicitor for J. F. Standefer, Defendant in Error and Appellant in the Court of Civil Appeals, 3rd District of Texas.

67 [Endorsed:] T. K. Wilson, plaintiff in error, *vs.* J. F. Standefer, defendant in error. Applied for by Hill & Wright, attorneys for pl'ff in error, April 28th, 1900, and delivered to them this May 5th, A. D. 1900. R. H. Connerly, clerk ct. civ. app., 3rd sup. judicial district of Texas.

Endorsed on cover: File No., 17,828. Texas court of civil appeals, 3rd judicial district. Term No., 343. T. K. Wilson, plaintiff in error, *vs.* J. F. Standefer. Filed July 11th, 1900.